

REMARKS

STATUS OF CLAIMS

Claims 26-47 are now pending in this application with claims 26, 41, and 47 being independent.

In response to the Office Action dated April 16, 2009, claims 29 and 40 have been amended to overcome the formal rejection noted below. Claim 41 has been amended to correct a typographical error. As these amendments are essentially directed to correcting matters of form that do not require a new search or raise any other issues, entry under 37 C.F.R. § 1.116 is respectfully submitted to be proper.

SUMMARY OF OFFICE ACTION

The Office Action is a final Office Action that presents rejections of claims 27, 34, 38, and 41, under the first paragraph of 35 U.S.C. § 112, rejections of claims 27, 29, 34, and 40 under the second paragraph of 35 U.S.C. § 112, a rejection of claims 26, 29-33, 35, 39-40, and 47 under 35 U.S.C. § 103(a) as being unpatentable over what the outstanding Action characterizes as “admitted prior art” in view of Ghoi et al. (U.S. Patent No. 6,775,556, hereinafter Ghoi), a rejection of claims 27, 34, 36, and 37 under 35 U.S.C. § 103(a) as being unpatentable over what the outstanding Action characterizes as “admitted prior art” in view of Ghoi in further view of Forte (U.S. Patent Application Publication No. 2002/0019246), a rejection of claims 28 and 34 under 35 U.S.C. § 103(a) as being unpatentable over what the outstanding Action characterizes as “admitted prior art” in view of Ghoi in further view of Freeny, Jr. et al. (U.S. Patent Application Publication No. 2003/0153352, hereinafter Freeny), a rejection of claim 38 under 35 U.S.C. § 103(a) as being unpatentable over what the outstanding Action characterizes as “admitted prior art” in view of Ghoi in further view of Makkonen et al. (U.S. Patent No. 5,594,777, hereinafter Makkonen), a rejection of claims 41-45 under 35 U.S.C. § 103(a) as being unpatentable over what the outstanding Action characterizes as “admitted prior art” in view of Makkonen, and a rejection of claim 46 under 35 U.S.C. § 103(a) as being unpatentable over what the outstanding Action characterizes as “admitted prior art” in view of

Makkonen in further view of Austin et al. (U.S. Patent Application Publication No. 2003/0162544, hereinafter Austin) and Carlsen et al. (U.S. Patent No. 6,192,254, hereinafter Carlsen).

REJECTIONS UNDER 35 U.S.C. §112, FIRST PARAGRAPH

Initially it is noted that the outstanding Action appears to have confused the requirement of the first paragraph of 35 U.S.C. §112 that is being actually relied upon to reject claims 27, 34, 38, and 41. In this regard, the statements of the rejections for each of claims 27, 34, 38, and 41 (appearing in items 3-6 on pages 2-3 of the outstanding Action) at first indicate that these rejections are based on a failure “to comply with the enablement requirement.” However the rationale then offered to reject each of these claims uses form paragraph 7.31.01 that specifies that “[t]he claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.”

As noted in MPEP § 706.03(c), form paragraph 7.31.01 is only to be used with rejections alleging a failure to comply with the written description requirement of the first paragraph of 35 U.S.C. § 112, not the enablement requirement that requires the use of form paragraph 7.31.02 that emphasizes that an indication is to appear alleging that the disclosure is insufficient because it does not “enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.”

The difference between these two requirements of the first paragraph of 35 U.S.C. § 112 is well established as is the fact that it is the written description requirement that is pertinent if specification “support” for a newly claimed feature is being questioned as appears to be the case relative to claims 27, 34, 38, and 41. See MPEP § 2163 noting that “[m]uch of the written description case law addresses whether the specification as originally filed supports claims not originally in the application. The issue raised in the cases is most often phrased as whether the original application provides ‘adequate support’ for the claims at issue ... (emphasis added).” On the other hand, if a failure to comply with the enablement requirement is to be properly

presented, then the requirements in MPEP § 2164.01 must be met. In this regard, this section notes that:

The standard for determining whether the specification meets the enablement requirement was cast in the Supreme Court decision of *Mineral Separation v. Hyde*, 242 U.S. 261, 270 (1916) which postured the question: is the experimentation needed to practice the invention undue or unreasonable? That standard is still the one to be applied. *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988). Accordingly, even though the statute does not use the term "undue experimentation," it has been interpreted to require that the claimed invention be enabled so that any person skilled in the art can make and use the invention without undue experimentation. *In re Wands*, 858 F.2d at 737, 8 USPQ2d at 1404 (Fed. Cir. 1988).

As the rejections of claims 27, 34, 38, and 41 (appearing in items 3-6 on pages 2-3 of the outstanding Action) only indicate allegations of a lack of "support" and make no attempt to establish "undue experimentation," these rejections are traversed below based upon the presentation of disclosure that provides "support" for the questioned claimed subject matter.

I. CLAIM 27

The descriptions in the specification of the subject matter support for claim 27 are sufficient to "reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed had possession of the claimed invention." In this regard, original claim 19 recited a "PABX according to claim 18, characterized in that its installed reversible package is able, at any time of work, by CPU orders, to switch the network function with extension." Also, original claim 22 recited "[s]oftware according to claims 20 to 21, characterized in that it is capable to order a PABX reversible package so that the communication channel which is being used by the mobile phone, switch from network to extension." Note that the claims as filed are considered to be part of the original disclosure. *See In re Benno*, 768 F.2d 1340, 226 USPQ 683 (Fed. Cir. 1985).

In addition, see Figure 1 and note section 3.3 of the specification titled "Electronic systems used in the embodiments of the invention," which states an example of a reversible extension package as a "[c]onvertible ISDN internal extension package." It is well established that drawings alone can provide the required written description. *See Vas-Cath, Inc. v. Mahurkar*,

935 F.2d 1555, 1565, 19 USPQ2d 1111, 1118 (Fed. Cir. 1991) ("drawings alone may provide a 'written description' of an invention as required by Sec. 112") and *In re Wolfensperger*, 302 F.2d 950, 133 USPQ 537 (CCPA 1962) (the drawings of applicant's specification provided sufficient written descriptive support for the claim limitation at issue).

Thus, the above-noted four disclosures that teach the reversible or convertible package of the PABX that can change from network/trunk to extension and from extension to network/trunk are clear support that satisfies the written description requirement.

Also, note section 3.4.1 of the specification titled "Function of mobile phone as an extension." This section notes that "[t]he mobile phone and the transmitter/receptor PABX will be chosen according to the transmission line." Further note Figure 1. These two disclosures teach the mobile phone transmitting/receiving unit.

Further, the above-noted section 3.3 ("Electronic systems used in the embodiments of the invention") discloses "[c]ell system transmitters and antennas. These elements can be GSM, UMTS, TDMA, CDMA, AMPS, NAMPS, ETACS, satellite, specific radio frequency transmission systems or any other kind of radio transmission system." and Figure 1 that clearly disclose the antennas of the PABX.

In addition, section 3.4.3 (titled "Phone calls made by mobile phone extension") teaches that "the PABX is able to integrate the mobile phone extension, and this last one is logically connected to the PABX as an internal extension." This section teaches and provides written description support for the PABX with any mobile phone that is integrated into the communication system.

With respect to the claimed "extension is via a frequency independent transmission," this is clearly taught by a consideration of the original claim 10 recital of a "[s]ystem according to claim 8, characterized in that the PABX has one or more transmitters as GSM, UMTS, TDMA, CDMA, AMPS, NAMPS, ETACS, or a transmission by satellite, or a different frequency transmitters according to the country's law at the moment of communication." Further note the teaching in the above-noted section 3.3 (titled "Electronic systems used in the embodiments of the invention" that specifies "[c]ell system transmitters and antennas. These elements can be GSM, UMTS, TDMA, CDMA, AMPS, NAMPS, ETACS, satellite, specific radio frequency

transmission systems or any other kind of radio transmission system" and page 3, lines 21-24 noting that "[h]owever this invention uses an independent radio system between PABX and the mobile phone as a transmission line. This independent radio system can be GSM, UMTS, satellite, TDMA, CDMA, AMPS, NAMPS, ETACS or any other kind radio transmission."

These three original parts of this application clearly teach that many different technologies having different frequencies or frequency bands can be used in the transmission devices. The section 3.3 statement that "any other kind of radio transmission system" is clear that characteristics of the radio transmission system are not critical and a teaching that the transmission devices are not dependent on frequency is believed to be clearly presented to the artisan in a manner that satisfies the written description requirement.

In this last respect, it is well established that the disclosure does not have to be word-for-word (*ipsis verbis*) relative to the claim language. See, for example, *In re Edwards*, 568 F2d 1349, 196 USPQ 465, 467 (CCPA 1978) noting that:

To comply with the description requirement it is not necessary that the application describe the claimed invention in *ipsis verbis*, *In re Lukach*, 58 CCPA 1233, 442 F.2d 967, 169 USPQ 795 (1971); all that is required is that it reasonably convey to persons skilled in the art that, as of the filing date thereof, the inventor had possession of the subject matter later claimed by him. See *In re Driscoll*, 562 F.2d 1245, 195 USPQ 434 (CCPA 1977). In the context of the present case, this translates into whether the parent application provides adequate direction which reasonably leads persons skilled in the art to the later claimed [subject matter].

Accordingly, as the subject matter of claim 27 is clearly supported by the original disclosure that would "reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed had possession of the claimed invention," withdrawal of this rejection of claim 27 is respectfully requested.

II. Claim 34

As noted above as to a similar frequency limitation found in claim 27, such limitations are believed to be clearly taught by a consideration of the above-noted disclosures. In addition, item 4 starting on page 2 of the outstanding Action alleges a lack of support as to transmission

also not being dependent on frequency band or modulation as well as not depending on frequency.

As was noted above, the original claim 10 recital was of a “[s]ystem according to claim 8, characterized in that the PABX has one or more transmitters as GSM, UMTS, TDMA, CDMA, AMPS, NAMPS, ETACS, or a transmission by satellite, or a different frequency transmitters according to the country’s law at the moment of communication.” The lack of dependence on frequency, frequency band or modulation would have been clear to the artisan from this alone.

This freedom from (not dependent on) the frequency, frequency band or modulation is also clearly taught by the teaching in the above-noted section 3.3 (titled “Electronic systems used in the embodiments of the invention”) that specifies:

Cell system transmitters and antennas. These elements can be GSM, UMTS, TDMA, CDMA, AMPS, NAMPS, ETACS, satellite, specific radio frequency transmission systems or any other kind of radio transmission system.

Also, the teaching at page 3, lines 21-24, of the specification indicates that transmission is not dependent on frequency, frequency band or modulation by noting that:

However this invention uses an independent radio system between PABX and the mobile phone as a transmission line. This independent radio system can be GSM, UMTS, satellite, TDMA, CDMA, AMPS, NAMPS, ETACS or any other kind radio transmission.

Once again, these three original parts of this application are submitted to clearly teach that all known different technologies having different frequencies, frequency bands, and/or types of modulation can be used in the transmission devices. The section 3.3 statement and that at page 3 that “any other kind of radio transmission system” can be used are clear teachings that characteristics of the radio transmission system (as to frequency, frequency band, or modulation) are not critical. Thus, a teaching that the transmission devices are not dependent on frequency, frequency band or modulation is believed to be clearly presented so that the artisan would have understood it. As noted above relative to the cited *Edwards* decision, literal word-for-word support (*ipsis verbis*) is not required.

Accordingly, as the subject matter of claim 34 is clearly supported by the original disclosure that would “reasonably convey to one skilled in the relevant art that the inventor(s), at

the time the application was filed had possession of the claimed invention,” withdrawal of this rejection of claim 34 is respectfully requested.

III. Claim 38

With respect to claim 38, the outstanding Action alleges (in item 5 on page 3) that the “examiner was not able to find support for the limitation: the communication system wherein identifying a mobile phone is done by more than one PABX.”

However, original claim 16 provided such support in reciting “[s]ystem according to claims 10 to 15, characterized in that it allows the referenced mobile phone to be recognized by more than one PABX.” As noted above, original claims are considered to be part of the original disclosure. *See In re Benno, supra.*

In addition, the disclosure of section 3.4.1 (titled “Function of mobile phone as an extension”) further discloses that a “mobile phone can be programmed as an extension of one or more PABX.”

These two original application disclosures provide clear support for the claim 38 recital that the communication system includes a mobile phone identified by more than one PABX.

Accordingly, as the subject matter of claim 34 is clearly supported by the original disclosure that would “reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed had possession of the claimed invention,” withdrawal of this rejection of claim 34 is respectfully requested.

IV. Claim 41

With respect to claim 41, the outstanding Action alleges (in item 6 on page 3) that the “examiner was not able to find support for the limitations: ‘a CPU of the PABX immediately integrates the mobile phone extension in the PABX’ and ‘the CPU of the PABX immediately integrates the mobile phone extension in the PABX as an internal extension of the PABX.’”

However, section 3.4.3 (titled “Phone calls made by mobile phone extension”) clearly discloses that “the PABX is able to integrate the mobile phone extension, and this last one is logically connected to the PABX as an internal extension.” The last step of the Figure 4 flow chart clearly further discloses that the “CPU integrates the extension circuit with the mobile

phone, which rings, being allowed to answer the phone call” as does an intermediate step of the Figure 6 flow chart that also discloses that the “CPU integrates the extension circuit with the mobile phone, which rings, being allowed to answer the phone call.” As noted above, it is well established that the drawings can also provide written description support. See again *Vas-Cath, Inc. v. Mahurkar, supra* and *In re Wolfensperger, supra*.

These three disclosures provide clear “support” that the CPU of the PABX immediately integrates the mobile phone extension in the PABX and it does integrate the mobile phone as an internal extension of the PABX given that the user can do any feature just like any other internal extension.

Accordingly, as the subject matter of claim 41 is clearly supported by the original disclosure that would “reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed had possession of the claimed invention,” withdrawal of this rejection of claim 41 is respectfully requested.

REJECTIONS UNDER 35 U.S.C. §112, SECOND PARAGRAPH

I. Claims 27 and 34

Claim 27 and Claim 34 have been rejected under 35 U.S.C. §112, second paragraph, essentially because item 8 and item 10 on page 4 of the outstanding Action appear to question how the claim 27 recited “communicating … via a frequency independent transmission” or how the claim 34 “transmission not dependent on frequency, frequency band or modulation” can be done.

However, the claims are not substitutes for the description of the invention that appears in the detailed description beginning on page 4 of the specification. It is the detailed description that provides the details as to how things are actually done, not the claims. In this last regard, the allegations in the outstanding Action asserting a lack of descriptive support for the limitations of providing “a frequency independent transmission” and a “transmission not dependent on frequency, frequency band or modulation” were answered above.

Accordingly, as the subject matter coverage of claims 27 and 34 would be understood when the claims are considered in light of the specification as required by *In re Johnson*, 558

F.2d 1008, 194 USPQ 187 (CCPA 1977) and *In re Moore*, 439 F.2d 1232, 169 USPQ 236 (CCPA 1971), the withdrawal of this rejection of claims 27 and 34 is respectfully requested.

II. Claim 29

Claim 29 has been rejected under 35 U.S.C. §112, second paragraph. It is believed that the present amendment to claim 29 is sufficient to overcome this rejection and render the scope of this claim clearly ascertainable.

III. Claim 40

Claim 40 has been rejected under 35 U.S.C. §112, second paragraph. The outstanding Action alleges a lack of clarity as to which of the two previously recited networks, the internal network or the external network, the language “a network” was referring to. As the amendment to claim 40 clarifies, both the external and the internal networks were intended to be referenced, withdrawal of this rejection is respectfully requested.

REJECTION OF CLAIMS UNDER 35 U.S.C. §103

I. CLAIMS 26, 29-33, 35, 39, 40, AND 47

As noted above, claims 26, 29-33, 35, 39, 40, and 47 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the asserted “admitted prior art” in view of Ghoi.

The bottom of page 6 through the first four lines on page 7 of the outstanding Action asserts that the teachings of Ghoi at col. 4, lines 40-64; col. 6, line 60 – col. 7, line 12, and lines 25-47; col. 9, line 1 – col. 10, line 12 somehow teach the subject matter noted at page 6, lines 8-15 of the outstanding Action as missing from what this Action has characterized as the “admitted prior art.”

Ghoi teaches a device and a method that includes a PABX 32 with fixed extensions 31, an analog trunk connection part 32-1 which connects the PABX to a WTCS-wireless trunk connection unit 33 (see col. 6, lines 60-63) and a public communication network 34 among other devices or elements. The WTCS includes a plurality of mobile stations 35 which are directly connected to WTCS (see col. 7, line 45-47). Extension subscribers 31 are common fixed extensions that do not connect to a public network without the PABX 32. Mobile devices 39 are

only registered in the mobile communication network. The only mobile stations that are “registered” in the PABX are the mobile stations 35.

None of these mobile stations 35 are disclosed to be the destination of any call. Instead, they are included as part of a communication path being used so that the call can be made without using the public communication network 34. In this regard a call made from extension subscriber 31 to the mobile device 39 passes through mobile station 35. Likewise, a call going in the other direction (from the mobile device 39 to the extension subscriber 31) passes through the mobile station 35. The mobile station 35 is simply a link in the middle of the communication system. The mobile station 35 is not the origin or the destination (see fig. 3, 4A and 4B).

In the present invention of independent claims 26 and 47, the at least one mobile phone extension connects to an external mobile phone network using a wireless carrier and to the PABX system via a mobile phone transmitting/receiving unit and antenna. The PABX includes a CPU that, among other things, detects, identifies and integrates the mobile phone as an internal extension as set forth by claim 26. This means that the mobile extension then has all of the characteristics that an internal extension has so it can at least make or receive a call.

Further, the registering of the mobile station 35 cannot be seen as the required PABX CPU detection, identification and integration of the claimed mobile phone. Also the at least one mobile phone extension of independent claims 26 and 47 must connect to the mobile phone transmitting/receiving unit and antenna while the only apparent connection of 35 is to 33 that in turn is connected to the connection part 32-1 (leading into PBAX 32) by standard cables. Thus, there is no teaching or suggestion of this subject matter required by independent claims 26 and 47.

In addition there is no teaching of anything corresponding to the required detection, identification and integration of the claimed mobile phone of these claims. In Applicant’s communication system, the detection concerns the reception of the call from the mobile phone, the identification concerns the Caller ID and/or a code sent through the network and the integration concerns the correspondence of internal characteristics that is made to the mobile phone as an internal extension.

Accordingly, even if the artisan would have had some reason to attempt to modify what the outstanding Action has characterized as being “admitted prior art” by Ghoi, which reason has not been properly established, the result of that modification still fails to teach all of the subject matter of independent claims 26 and 47. Therefore, there is no establishment of the required case of *prima facie* obviousness, and the rejection of independent claims 26 and 47 under 35 U.S.C. §103(a) as being unpatentable over the asserted “admitted prior art” in view of Ghoi is clearly improper and should be withdrawn.

Furthermore, as claims 29-33, 35, and 39-40 depend directly or indirectly from independent claim 26, these dependent claims are respectfully submitted to be improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over the asserted “admitted prior art” in view of Ghoi for at least the same reason as noted above as to parent independent claim 26. Accordingly, the withdrawal of the improper rejection of dependent claims 29-33, 35, and 39-40 under 35 U.S.C. § 103(a) as unpatentable over the asserted “admitted prior art” in view of Ghoi is also respectfully requested.

II. CLAIMS 27, 34, 36, AND 37

As noted above, claims 27, 34, 36, and 37 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the asserted “admitted prior art” in view of Ghoi and Forte.

Forte is cited as to the subject matter added by claims 27, 34, 36, and 37 that all ultimately depend on independent claim 26. Forte does not cure the deficiencies noted above as to the reliance on the asserted “admitted prior art” in view of Ghoi. Accordingly, dependent claims 27, 34, 36, and 37 patentably define over the applied references and asserted “admitted prior art” for at least the same reason that parent independent claim 26 does. Therefore, the withdrawal of this improper rejection of claims 27, 34, 36, and 37 under 35 U.S.C. §103(a) as being allegedly unpatentable over the asserted “admitted prior art” in view of Ghoi and Forte is respectfully requested.

III. CLAIMS 28 AND 37

As noted above, claims 28 and 37 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the asserted “admitted prior art” in view of Ghoi and Freeny.

Freeny is cited as to the subject matter added by claims 28 and 37 that ultimately depend on independent claim 26. Freeny does not cure the deficiencies noted above as to the reliance on the asserted “admitted prior art” in view of Ghoi. Accordingly, dependent claims 28 and 37 patentably define over the applied references and asserted “admitted prior art” for at least the same reason that parent independent claim 26 does. Therefore, the withdrawal of this improper rejection of claims 28 and 37 under 35 U.S.C. §103(a) as being allegedly unpatentable over the asserted “admitted prior art” in view of Ghoi and Freeny is respectfully requested.

IV. CLAIM 38

As noted above, claim 38 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the asserted “admitted prior art” in view of Ghoi and Makkonen.

Makkonen is cited as to the subject matter added by claim 38 that ultimately depends on independent claim 26. Makkonen does not cure the deficiencies noted above as to the reliance on the asserted “admitted prior art” in view of Ghoi. Accordingly, dependent claim 38 patentably define over the applied references and asserted “admitted prior art” for at least the same reason that parent independent claim 26 does. Therefore, the withdrawal of this improper rejection of claim 38 under 35 U.S.C. §103(a) as being allegedly unpatentable over the asserted “admitted prior art” in view of Ghoi and Makkonen is respectfully requested.

V. CLAIMS 41-45

As noted above, claims 41-45 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the asserted “admitted prior art” in view of Makkonen.

The teachings of Makkonen relate to communications on the mobile network that has different cell areas. Calls made by mobile phones to mobile phones with short extension type numbers (area I, for example) that can have a different charging plan from the calls made in different areas. This is a mobile network charging policy that does not include any interference with communications made by a mobile extension from the PABX that is connected, identified and integrated with a reversible circuit. Even on connections 2, 4 or 5 mobile phones are not mobile PABX extensions because mobile phones 13, 10 and 14 are not PABX extensions but only members of the mobile network.

The PABX has a connection to the mobile operator as a member of the group, thus all calls made with internal numbers may have a translation on the subscriber data register of the mobile phone exchange with a public mobile number. This translation does not mean they are somehow made into PBAX extensions, only that they have a short number mimicking an extension number that can be called. See column 5, lines 7-14, and note that contrary to the assertion at page 13, lines 17-19, this is not a teaching of integrating the mobile phone in the PABX as an internal extension of the PABX.

Similarly, all that col. 5, lines 15-26 of Makkonen teach is that when a mobile phone MS is called from the PBAX extension number using any one of the listed possible numbers, the call is connected to the mobile phone exchange the number as dialled. The mobile phone exchange can then translate this dialled number into the normal mobile phone number using a data table. This is not a teaching of the independent claim 41 steps listed on page 13 of the outstanding Action that “when the PABX starts the connection, the PABX sends to the mobile phone a connection indication signal through a transmission line, the mobile phone accepts the communication, circuits identify the mobile phone [corrected to read “phone by the present amendment] as a mobile phone extension and switch the circuits, and a CPU of the PABX immediately integrates the mobile phone extension in the PABX.”

This Makkonen scenario further has a cell limitation and does not apply to all the radio coverage area as in the present invention.

Also, the mobile phone exchange is a mobile operator element (see col. 4, lines 31-37, col. 6, lines 10-12). Thus, the translations from internal numbers to public mobile numbers are made on the operator side and for purposes of charging and restriction only, but not for full feature integration of the mobile phone extension in the PABX as in independent method claim 41.

In effect, Makkonen only teaches a solution for translation of numbers using a translation table not part of the present invention which in fact is not an access to the PABX, but a mirror that can translate only codes that are inserted in the translation table at the above-noted exchange. The claim 41 required integration of the mobile phone extension in the PBAX is clearly not taught or suggested

Accordingly, even if the artisan would have had some reason to attempt to modify what the outstanding Action has characterized as being “admitted prior art” by Makkonen, which reason has not been properly established, the result of that modification still fails to teach all of the subject matter of independent claim 41. Therefore, there is no establishment of the required case of *prima facie* obviousness, and the rejection of independent claim 41 under 35 U.S.C. §103(a) as being unpatentable over the asserted “admitted prior art” in view of Makkonen is clearly improper and should be withdrawn.

Furthermore, as claims 42-45 depend directly or indirectly from independent claim 41, these dependent claims are respectfully submitted to be improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over the asserted “admitted prior art” in view of Makkonen for at least the same reason as noted above as to parent independent claim 41. Accordingly, the withdrawal of the improper rejection of dependent claims 42-45 under 35 U.S.C. § 103(a) as unpatentable over the asserted “admitted prior art” in view of Makkonen is also respectfully requested.

VI. CLAIM 46

As noted above, claim 46 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the asserted “admitted prior art” in view of Makkonen and in further view of Austen and Carlsen.

Austen and Carlsen are cited as to the subject matter added by claim 46 that ultimately depends on independent claim 41. Austen and Carlsen do not cure the deficiencies noted above as to the reliance on the asserted “admitted prior art” in view of Makkonen. Accordingly, dependent claim 46 patentably define over the applied references and asserted “admitted prior art” for at least the same reason that parent independent claim 41 does. Therefore, the withdrawal of this improper rejection of claim 46 under 35 U.S.C. §103(a) as being allegedly unpatentable over the asserted “admitted prior art” in view of Makkonen in further view of Austen and Carlsen is respectfully requested.

CONCLUSION

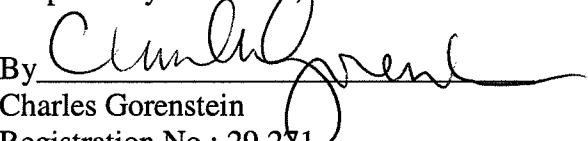
In view of the above, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Raymond F. Cardillo, Jr., Reg. No. 40,440 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: October 15, 2009

Respectfully submitted,

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